

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND DEPARTMENT

Biaggi & Biaggi v. 175 Medical Vision Properties, LLC

105 A.D.3d 790, 961 N.Y.S.2d 807 (N.Y. App. Div. 2013) · Decided April 10, 2013

SUMMARY

The New York Appellate Division, Second Department, affirmed an order granting defendants leave to amend their answer to add five counterclaims. The court held that any delay caused by transferring venue between counties was neither prejudicial nor sufficiently gross to justify denying leave to amend.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Skelos, J.P.; Angiolillo, J.; Roman, J.; Cohen, J.
JURISDICTION	New York
DECIDED	April 10, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	In an action including a claim for breach of contract, the plaintiff appealed from an order granting the defendants leave to amend their answer to assert five counterclaims.
STANDARD OF REVIEW	Whether to grant leave to amend pleadings is committed to the sound discretion of the trial court and is reviewed on a case-by-case basis; leave should be freely given absent prejudice or surprise directly resulting from delay.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Biaggi & Biaggi v. 175 Medical Vision Properties, LLC

TOPICS

[motion to amend](#) [pleadings](#) [civil procedure](#) [breach of contract](#) [commercial litigation](#)

PRACTICE AREAS

[civil procedure](#) [contracts](#) [commercial litigation](#)

QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted the defendants leave to amend their answer to assert five counterclaims.
2. Whether any delay in renewing the motion after the venue transfer was sufficiently prejudicial or gross to warrant denial of leave to amend.

HOLDINGS

1. Leave to amend the pleadings was properly granted because the plaintiff failed to show prejudice or surprise directly resulting from the delay.

KEY QUOTATIONS

“Leave to amend the pleadings “shall be freely given” absent prejudice or surprise resulting directly from the delay” (790)

“The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis” (790)

FACTUAL BACKGROUND

The defendants sought leave to amend their answer to include five counterclaims. Their initial motion was made in Kings County after venue had been transferred there, but the case was later transferred back to Westchester County and the motion was denied without prejudice to renewal there. The defendants timely renewed the motion in Westchester County, and the plaintiff did not establish prejudice or surprise resulting from the delay.

PROCEDURAL HISTORY

The defendants moved for leave to amend their answer while the action was pending in Kings County. After venue was transferred back to Westchester County, the Kings County motion was denied without prejudice to renewal in Westchester County. The defendants timely renewed the motion there, and the Supreme Court, Westchester County, granted it. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- McCaskey, Davies & Assoc. v. New York City Health & Hosps. Corp., 59 N.Y.2d 755, 757 (1983)
- Fahey v. County of Ontario, 44 N.Y.2d 934, 935 (1978)
- Skinner v. Scobbo, 221 A.D.2d 334, 335 (1995)
- Hickey v. Hutton, 182 A.D.2d 801, 802 (1992)

OPINION

PER CURIAM.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered February 1, 2012, which granted the defendants' motion for leave to amend the answer to include five counterclaims. Ordered that the order is affirmed, with costs. Leave to amend the pleadings "shall be freely given" absent prejudice or surprise resulting directly from the delay (CFLR 3025 [b]; McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp., 59 NY2d 755, 757 [1983]; Fahey v County of *791Ontario, 44 NY2d 934, 935 [1978]). "The granting of such leave is committed to the sound discretion of the trial court and must be determined on a case-by-case basis" {Skinner v Scobbo, 221 AD2d 334, 335 [1995]}. Inasmuch as the venue for this case had been changed from Westchester County to Kings County, the defendants moved the Supreme Court, Kings County, on or about February 19, 2010, for leave to amend their answer. After the venue of the case was transferred back to Westchester County, the defendants' motion was denied without prejudice to renew the same motion in Westchester County, which they accomplished in a timely fashion. Accordingly, the Supreme Court, Westchester County, properly granted the motion, since any delay in filing the motion in Westchester County was neither prejudicial nor so gross as to warrant denial of the motion on that basis {see id. at 335; Hickey v Hutton, 182 AD2d 801, 802 [1992]}. The plaintiff's remaining contentions are without merit. Skelos, J.R, Angiolillo, Roman and Cohen, JJ., concur.